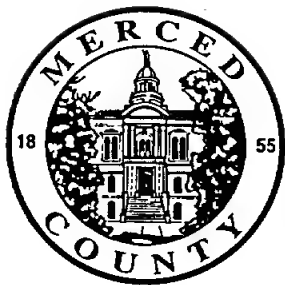


*GRAND JURY
REPORT
2001/2002*






MERCED COUNTY GRAND JURY

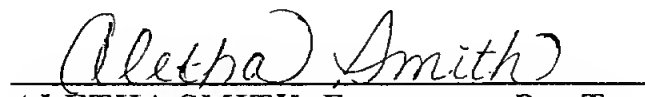
*P.O. BOX 2034
MERCED, CALIFORNIA 95344*

www.co.merced.ca.us/civilgrandjury/index.html

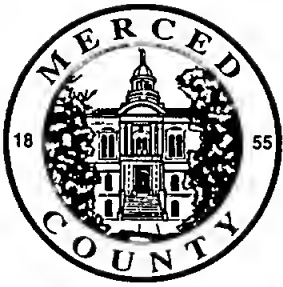
**THIS FINAL REPORT HAS BEEN REVIEWED
AND UNANIMOUSLY APPROVED BY THE
2001-2002 MERCED COUNTY GRAND JURY**



**KAY CHAPMAN, Foreperson
2001-2002 Merced County Grand Jury**



**ALETHA SMITH, Foreperson Pro Tem
2001-2002 Merced County Grand Jury**



MERCED COUNTY GRAND JURY

*P.O. BOX 2034
MERCED, CALIFORNIA 95344*

www.co.merced.ca.us/civilgrandjury/index.html

The Honorable Hugh Flanagan
Assistant Presiding Judge
2001-2002 Merced County Grand Jury
Merced County Superior Court

Dear Judge Flanagan:

On behalf of the 2001-2002 Merced County Grand Jury, I am pleased to submit a Final Report to you as required by California Penal Code Section 933.

This group of jurors has been extremely thorough in their efforts to investigate, respond to complaints, examine all information, interview and question numerous individuals, read through reams of supporting data and reports, and—above all—to strive diligently for objectivity and impartiality in the putting together of final conclusions.

Taken all together, literally thousands of hours have gone into the effort expended by the 2001-2002 Grand Jury. Every juror involved viewed this as a civic duty and looked at serving on the Grand Jury for twelve months as a way to give back to our county and perhaps improve it in some way.

We thank those individuals who provided us with assistance and information when called upon and are grateful to those citizens who stepped forward to share their concerns. We appreciate their trust in what can be the most confidential of matters.

We are proud of our efforts on behalf of Merced County.

Respectfully,

Kay Chapman, Foreperson
2001-2002 Merced County Grand Jury
June 28, 2002

**MERCED COUNTY GRAND JURY
2001-2002 FINAL REPORTS**

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**2001-2002
MERCED COUNTY
GRAND JURY MEMBERS**

Angelina Alvarez

Jan Carroll

Kay Chapman

Foreperson

Susan Coston

Committee Chairperson

Lueretta Dirickson*

Ann Glasgow

Committee Chairperson

Chris Halstead

Secretary

Betty Hoffman

Kathy Kidd

Committee Chairperson

Patty Martinez

Dee Montoya

Donald Noren

Keith Parker

Rebecca Reyna-Villarreal

Committee Chairperson

Barbara Robinson

Aletha Smith

Foreperson Pro Tem

Lori Tucker*

LaMonte Tumbling

Glenda Wertz

***Juror unable to complete a full year's term**

**2001-2002
MERCED COUNTY GRAND JURY**

*Kay Chapman, Foreperson
Aletha Smith, Foreperson Pro Tem
Chris Halstead, Secretary*

COMMITTEE MEMBERSHIP

AUDIT AND FINANCE / CITIES AND JOINT POWERS COMMITTEE

Kathy Kidd, Chair
Lori Tucker, Co-Chair*
Donald Noren
Keith Parker

COUNTY ADMINISTRATION / COUNTY SERVICE COMMITTEE

Rebecca Reyna-Villarreal, Chair
Chris Halstead, Co-Chair
Patty Martinez
Aletha Smith

HEALTH, EDUCATION AND WELFARE COMMITTEE

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LaMonte Tumbling

LAW, JUSTICE, AND PUBLIC SAFETY / SPECIAL DISTRICTS

Susan Coston, Chair
Jan Carroll, Co-Chair
Dee Montoya
Glenda Wertz
Lueretta Dirickson*

*Juror unable to complete a full year's term

GRAND JURY HISTORY AND FUNCTIONS

Historically, grand juries have performed two functions. They decided whether someone should be charged—"indicted"—for committing a crime. They also investigated the conduct of public affairs. Before the American Revolution, colonial grand juries essentially ran local government, supervising everything from road building and bridge maintenance to the operation of local jails. Over the years, they lost much of their public-affairs functionality, as the operation of local government was taken over by administrative agencies, a system that did not exist in colonial times.¹

The grand-jury system originated in England in 1166 A.D. Previously, the English had used a 12-person jury to bring charges against the accused. Trial was then conducted by combat or *ordeal* (holding onto a red-hot iron, being thrown into water to see if one floated, etc.). This approach became outlawed by the Catholic Church, and the Normans (who had conquered England and were then establishing the laws) had to come up with a new method of trial. They made the 12-person jury the trial jury (*petit jury*) and created a 23-person *grand jury* to investigate and bring charges. Until very late in English law, someone charged with a felony was not even entitled to have an attorney at trial (or be advised of the charges against them). Consequently, it was inconceivable that a grand jury witness or interviewee would have a lawyer.² This is still the case before a grand jury today.

In the 13th and 14th centuries, all or some of the grand jury members always sat in the *petit jury*, which actually heard the case at trial. The judges sometimes took the view that when members of a petit jury (who had been on the grand jury which indicted a defendant), later acquitted that person at trial, they had contradicted themselves and could be punished. Thus, the true function of the criminal grand jury emerged—to determine whether, from the prosecution's evidence, there were grounds for trial.

Besides acting as a screening device to reduce the workload of the royal judges, the grand jury evolved into an institution which allowed a degree of local control of criminal prosecutions. It finally was asserted that royal judges had no right to hear cases unless approval had been granted by the grand jury in the locality where the crime had occurred.

When our forefathers crossed the Atlantic Ocean to build a new home, they brought with them the concept of the grand jury as an institution to protect the citizen from unjust prosecution. To insure its use for this purpose, the grand jury was expressly provided for in the Fifth Amendment to the Constitution of the United States. "*No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of the Grand Jury.*"³

Federal grand juries lost their ability to investigate non-criminal activity and report on what they found. Using federal grand juries to investigate civil matters declined in the 19th Century and was abolished in 1946.

State grand juries still have this ability. The most common civil matter they investigate is the operation and condition of local jails and other confinement facilities. California grand juries investigate the conduct, and potential misconduct, of county [and city] officers and employees.⁴

The grand jury in the United States has become both a sword and a shield of justice: A sword, because it can investigate crime and indict criminals; a shield, because by its secret and nonpublic nature, it can protect the innocent against unfair publicity. These important powers carry equally grave responsibilities to see that such powers are not abused. Unless motivated by the highest sense of justice, a grand jury might return indictments not warranted by the evidence and thus become a source of oppression to innocent citizens. On the other hand, a grand jury might dismiss charges against those who should be indicted. The importance of its powers is emphasized by the fact that it is an independent body answerable to no one except the court itself.⁵

The first California Penal Codes contained statutes providing for a grand jury to be impaneled quarterly, at the same time as the trial jurors were drawn. Early grand juries investigated local prisons, conducted audits of county books, and pursued matters of community interest. The role of the grand jury in California is unique. The statutes passed in 1880 allowed their duties to include investigation of county government by a grand jury beyond alleged misconduct of public officials. Only California and Nevada mandate that grand juries be impaneled annually to function specifically in a *watchdog capacity over county government*.⁶ The law allows each county to have two grand juries impaneled at the same time: The regular Civil Grand Jury for the fiscal year and a short-term Grand Jury for purposes of obtaining specific indictments.

The principal function of the Civil Grand Jury is to exercise oversight of all aspects of county and city government and special districts within the county to ensure that the best interests of its citizens are being served. Although investigations are usually begun on the basis of citizen complaints, the Grand Jury also acts on its own initiative. A minimum of 12 of the 19 grand jurors must authorize the undertaking of an investigation. By law, grand jurors are prohibited from disclosing the evidence obtained in their investigations and revealing the names of complainants or witnesses. Similarly, witnesses are prohibited from disclosing any proceedings of the grand jury.⁷

¹ School of Law, University of Dayton, Federal Grand Jury papers, "Grand Jury Functions" - 2002

² School of Law, University of Dayton, Federal Grand Jury papers, "Grand Jury Origins" - 2002

³ Bruce Roberson, Ochiltree, Texas County Attorney, "History of the Grand Jury" - 2002

⁴ School of Law, University of Dayton, Federal Grand Jury papers, "Grand Jury Functions" - 2002

⁵ Bruce Roberson, Ochiltree, Texas County Attorney, "History of the Grand Jury" - 2002

⁶ Merced County website, "History of the Grand Jury" - 2002

⁷ Superior Court of California, County of Sonoma, "Grand Jury Information" - 2002

Instructions to Respondents

GRAND JURY FINAL REPORTS AND RESPONSES

Penal Code Section 933/933.05

933. (a) Each grand jury shall submit to the presiding judge of the superior court a final report of its findings and recommendations that pertain to county government matters during the fiscal or calendar year. Final reports on any appropriate subject may be submitted to the presiding judge of the superior court at any time during the term of service of a grand jury. A final report may be submitted for comment to the responsible officers, agencies, or departments, including the county board of supervisors, when applicable, upon finding of the presiding judge that the report is in compliance with this title. For 45 days after the end of the term, the foreperson and his or her designees shall, upon reasonable notice, be available to clarify the recommendations of the report.

(b) One copy of each final report, together with the responses thereto, found to be in compliance with this title shall be placed on file with the county clerk and shall remain on file in the office of the county clerk. The county clerk shall immediately forward a true copy of the report and the responses to the State Archivist who shall retain that report and all responses in perpetuity.

(c) No later than 90 days after the grand jury submits a final report on the operations of any public agency subject to its reviewing authority, the governing body of the public agency shall comment to the presiding judge of the superior court on the findings and recommendations pertaining to matters under the control of the governing body, and every elected county officer or agency head for which the grand jury has responsibility pursuant to Section 914.1 shall comment within 60 days to the presiding judge of the superior court, with an information copy sent to the board of supervisors, on the findings and recommendations pertaining to matters under the control of that county officer or agency head and any agency or agencies which that officer or agency head supervises or controls. In any city and county, the mayor shall also comment on the findings and recommendations. All of these comments and reports shall forthwith be submitted to the presiding judge of the superior court who impaneled the grand jury. A copy of all responses to grand jury reports shall be placed on file with the clerk of the public agency and the office of the county clerk, or the mayor when applicable, and shall remain on file in those offices. One copy shall be placed on file with the applicable grand jury final report by, and in the control of the currently impaneled grand jury, where it shall be maintained for a minimum of five years.

(d) As used in this section "agency" includes a department.

933.05(a) For purposes of subdivision (b) of Section 933, as to each grand jury finding, the responding person or entity shall indicate one of the following:

(1) The respondent agrees with the finding.

(2) The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefore.

(b) For purposes of subdivision (b) of Section 933, as to each grand jury recommendation, the responding person or entity shall report one of the following actions:

(1) The recommendation has been implemented, with a summary regarding the implemented action.

(2) The recommendation has not yet been implemented, but will be implemented in the future, with a timeframe for implementation.

(3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a timeframe for the matter to be prepared for discussion by the officer or head of the agency or department head being investigated or reviewed, including the governing body of the public agency when applicable. This timeframe shall not exceed six months from the date of publication of the grand jury report.

(4) The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefore.

(c) However, if a finding or recommendation of the grand jury addresses budgetary or personnel matters of a county agency or department headed by an elected official, both the agency or department head and the board of supervisors shall respond if requested by the grand jury, but the response of the board of supervisors shall address only those budgetary or personnel matters over which it has some decision-making authority. The response of the elected agency or department head shall address all aspects of the findings or recommendations affecting his or her agency or department.

(d) A grand jury may request a subject person or entity to come before the grand jury for the purpose of reading and discussing the findings of the grand jury report that relates to that person or entity in order to verify the accuracy of the findings prior to their release.

(e) During an investigation, the grand jury shall meet with the subject of that investigation regarding the investigation, unless the court, either on its own determination or upon request of the foreperson of the grand jury, determines that such a meeting would be detrimental.

(f) A grand jury shall provide to the affected agency a copy of the portion of the grand jury report relating to that person or entity two working days prior to its public release and after the approval of the presiding judge. No officer, agency, department, or governing body of a public agency shall disclose any contents of the report prior to the public release of the final report.

MERCED COUNTY DEPARTMENT OF PUBLIC WORKS ROAD DIVISION

INTRODUCTION/BACKGROUND

The Grand Jury has the responsibility to review County Departments of its choice during its term of service. The Road Division, one of the numerous divisions of Public Works, was selected for review.

The primary function of the Road Division is the preservation of the county road system, the extension of road life through maintenance. Additionally, the development of roads in subdivisions and new developments, road inspection, storm drains, signs, striping, painting crosswalks, maintenance of vehicles, road use permits, receipt and collection of impact fees, weed abatement, and refuse collection are within the scope of responsibility for this division of the Department of Public Works.

METHOD OF INVESTIGATION

- 02/06/02 A committee of the Grand Jury interviewed the Deputy Director, Stephen Hamilton, at his office located at 345 W. 7th Street, Merced.
- 02/15/02 A committee of the Grand Jury interviewed the Refuse Collections Supervisor/Road Inspector, Tom Gaffery, at his office located at 345 W. 7th Street, Merced.
- 03/05/02 A committee of the Grand Jury toured Public Works facilities and county roads, accompanied by Deputy Director Stephen Hamilton and Assistant Director Lincoln Clendenin.

FINDINGS

• Funding

General revenue for this division is derived from state fuel taxes, county general fund, and miscellaneous income. Project specific revenue is dependent upon state and federal aid for construction, impact fees, grants, and reimbursements for services.

The preservation expenditure necessary to stop road deterioration was reported to be \$5,100,000 per year. This is in excess of the budgeted amount of \$3,460,000 for this fiscal year by \$1,640,000. This year's budget includes a one-time carryover of Assembly Bill 2928 in the amount of \$2,372,600. Next year that resource will not be available, and the preservation expenditure will be significantly reduced.

It was noted that the county would lose 20-25 miles of road yearly if resources are not forthcoming with additional revenue. The cost to reconstruct one mile of road is \$550,000. Funds available from Senate Bill-45 are currently under the management of Merced County Association of Governments. MCAG has chosen to use these funds (approximately \$8.5 million a year) for the construction of new roads or the reconstruction of State Highways.

Allowing any existing roads to deteriorate, when revenue is available but is being earmarked for new projects and State Highway reconstruction (which is not the responsibility of the county), is a costly decision.

- **Staffing/Salaries**

The number of staff has declined over the last 20 years due to restrictive funding. The Refuse Collections Supervisor/Road Inspector has one employee in his department. Work-in-lieu prisoners from the correctional facility at Sandy Mush are assigned to do community service. The county employee assigned to these work details has no training in correctional supervision. Rather than supplementing the work force, these work-in-lieu prisoners have become the work force in this particular area of the Road Division. Salaries are low compared to other counties in California.

- **Impact Fees**

Impact Fees, a source of revenue for specific projects, have not been collected on a standard basis. An "honor system" has been used, resulting in delinquencies.

There are no written policies and procedures for recording income collected or for handling delinquent accounts. It is recognized that recently Tom Gaffery was temporarily assigned the duty of collecting delinquent fees and has collected a substantial amount of money. He is also in the process of formulating policies and procedures for future collection.

RECOMMENDATIONS

- 1) In order to prevent the costly reconstruction of roads, it is imperative that funding resources be explored which can provide the revenue necessary for a maintenance program to preserve the 1,100 miles of roads which exist in this county. It is recommended that all agencies work cooperatively and that revenue be shared in the best interest of protecting the public's investment in the existing road system.
- 2) Policies and procedures regarding the collection of Impact Fees must be developed and put into place immediately. It is recommended that a set schedule for the timely notice of all delinquent fees be included and that a copy of such notices be sent to the Planning Department. It is strongly recommended that the Conditional Use Permit Agreement be revised to include an audit provision. All Conditional Use Permit Agreements must be signed by the applicant.
- 3) In consideration of safety and county liability, careful thought must be given to more appropriate supervision of the work-in-lieu prisoners.

COMMENDATION

The dedication of the Road Division in the task of maintaining the existing county roads without sufficient funding is commendable.

MERCED COUNTY DISTRICT ATTORNEY

INTRODUCTION/BACKGROUND

As part of an on-going effort to review operations of County Departments, the Grand Jury elected to conduct a review of operations of the District Attorney's Office.

METHOD OF INVESTIGATION

On March 14, 2002, a committee of the Grand Jury toured the offices of the District Attorney located at 652 W. 20th Street and 1944 M Street, and interviewed the District Attorney and several investigators.

FINDINGS

Role:

The District Attorney's Office is comprised of a number of units with each having a very defined role.

- **Ag Crimes Unit** enforces laws and provides investigative services related to theft and damage in the agricultural communities.
- **Bad Check Unit** holds these violators accountable without adding undue burden on the criminal justice system.
- **Career Criminal Unit** targets repeat criminals.
- **Child Abduction Unit** enforces child custody and visitation orders and locates and returns children who have been taken by a parent.
- **Domestic Violence Unit** prosecutes cases of domestic and family violence.
- **Drug Prosecution Unit** prosecutes cases of major felony cases involving controlled substances.
- **Elder Abuse Unit** prosecutes people who cause harm to an elderly person.
- **Environmental Protection Unit** investigates and prosecutes civil and criminal violations relating to unlawful discharge of hazardous materials.
- **Family Support Unit** enforces court orders for child support and issues related to the child support. This unit will not be under the District Attorney's Office as of June 30, 2002 as a result of state program changes.
- **Felony Unit** handles all felony prosecutions that are not assigned to units, including (but not limited to) homicides, thefts, DUIs, drug possessions, burglaries and sexual assaults of adults.
 - The Deputy District Attorneys have caseloads 1.5 times larger than their counterparts in other counties.
- **Bureau of Investigations** investigates felony cases for the District Attorney's office as well as other local law enforcement agencies and local governments as needed.
- **Juvenile Division** handles crimes committed by juveniles (individuals under the age of 18).

- **Misdemeanor Division** handles crimes that are punishable by up to one year in the county jail.
- **Sex offenders** are divided into three categories: *High-Risk*, *Serious Sex Offender*, and *Other Sex Offender*. High-risk registered sex offenders in Merced County are posted on the District Attorney's section of the Merced County website. A high-risk sex offender has been convicted of multiple violent offenses. Merced County currently has 722 registered sex offenders.
- **Sexual Assault Unit** prosecutes felony crimes of sexual molestation against children.
- **Statutory Rape Unit** investigates all reports of statutory rape (rape of a person under the age of 18).
- **Victim/Witness** provides assistance to victims and witnesses of crimes in Merced County.
- **Welfare Fraud Unit** prosecutes those who commit fraud in order to receive AFDC or food stamps.

The District Attorney devotes most of his time to high profile/violent criminal cases and high profile consumer fraud complaints, such as the false advertising of computer screen size and the sale of expired baby formula. The District Attorney receives cases from local law enforcement agencies, other public agencies, and directly from citizens.

Personnel:

The District Attorney's office is divided into three major sections, according to the department organizational chart: *Investigations*, *Prosecution* and *Administrative Services*. The Investigations section has 25 positions with several openings. The investigators are assigned to programs based on their funding source. There are 15 welfare fraud investigators and few other special grant investigators. The District Attorney's office has been funded for one general-purpose investigator for the past twenty years. This investigator follows up on homicides, rapes, misdemeanors, and juvenile crimes. The Prosecution section has 24 positions with several openings. The Administrative Services section has 41 positions with several vacancies.

Facilities

The District Attorney's facility at 652 W. 20th Street was ample. The facility at 1944 M Street houses the investigators. They recently moved into this facility, which seems to be adequate for the staff located at this site. The waiting area is sectioned off and secured by a lock that must be opened by staff from the inside.

The District Attorney expressed a desire to have his department consolidated in one location close to the courthouse, which could reduce equipment and staff costs. The new building proposed by the Board of Supervisors does not include the District Attorney's office or Public Defenders office.

Budget

The District Attorney feels the County has been supportive when they lose grants for special issues by supplementing their funding. The District Attorney's budget was increased two years ago.

Salaries for ten investigators are not within the seven county survey average conducted by the Board of Supervisors. Of the ten employees, the federal government reimburses the county for .925 cents for every dollar spent on six of the salaries. This leaves four salaries that would need full county funding.

RECOMMENDATIONS

1. The Board of Supervisors should consider evaluating the need to consolidate the offices of the District Attorney or possibly including the department in a court complex.
2. The Board of Supervisors should evaluate the need to add another general-purpose investigator.
3. The Board of Supervisors should address the need to raise the salaries of the investigating officers to the Seven County Survey Average (a Merced County salary survey which compares salaries in seven surrounding counties) as soon as the budget allows.

MERCED COUNTY JUVENILE DETENTION CENTER
Mandated Inspection

INTRODUCTION / BACKGROUND

Under California Penal Code 919 (b), the Grand Jury is required annually to inspect the condition and management of detention facilities within the County.

METHOD OF INVESTIGATION

- 1/17/02 Bill Davidson, Chief Probation Officer in charge of Juvenile Hall operations; Franz Moosbauer, Division Director – Custody Services Division; and Tina Anderson, Juvenile Hall Program Manager, met with the Grand Jury to provide background information in preparation for the annual tour of the Juvenile Hall facility.
- 02/7/02 The Grand Jury toured the Juvenile Hall facility located at 1411 B Street in Merced.

FINDINGS

- The current facility is over 50 years old, with one upgrade being done in the 1970's. This upgrade included the addition of a third wing dormitory and centralizing the monitoring control room. Nearly 1600 youths were brought to the hall last year. Currently a maximum of 42 youths can be housed. The projected need for juvenile detention in the year 2005 is 240 youths.
- In April 1998, a Needs Assessment for a new structure was completed by the Probation Department and accepted by the Board of Supervisors. The new facility will be located on Sandy Mush Road adjacent to the Sheriff's Adult Correctional Facility. A three-phase building plan provides for phase one to be completed in December of 2003 at a cost of \$15 million. Phases two and three could be completed at today's cost for an additional \$33 million. Funding will be provided through grants and county resources. The projected annual operating cost of the facility is \$3 million.
- For every ten youths, there is one full-time correctional officer. The youth offenders range from 12 to 18 years old. The average detention time is 10 to 40 days. However, there are some detained for as little as 24 hours. In short-term detentions, the youths are usually released to the custody of their parents. The higher risk offenders may be detained for one year or longer and may be tried as adults.

- The control center is located in a portion of one room and provides a wide view down each of the major wings. The closed circuit TV monitors are inadequate. There is a portion of the outside recreation area that cannot be viewed either on the closed circuit TV monitors or by staff, when at the door entering the area.
- This facility is antiquated, cramped, overcrowded and dangerous. It is difficult to provide counseling, schooling, and training in simple life skills under the present conditions. There is a cemented recreation yard, which is not adequately secured. To date, fifteen juveniles have escaped from this area. The laundry room is in disrepair, and the laundry setup is very staff intensive. Due to lack of storage space, a stack of temporary bed frames is stored in the laundry room. The ceiling of the facility contains old exposed piping placed there in 1984 for engineering purposes.
- There is a regulation storage room (9 cubic feet per youth) for personal property. Each juvenile is issued clean underwear on a daily basis and outerwear three times a week. They shower daily. The Board of Corrections regulates everything that pertains to detainees, such as bedding changes, strip searches, issuance of clothing, etc. The juveniles exercise daily and are given one hour of muscle activity. They are then required to participate in team games, which are preceded by calisthenics. On weekends, there is a minimum of two hours of exercise. They also have quiet recreational pursuits, such as writing letters.
- There is zero tolerance for gang activity. Classifying detainees according to offense, age, and size maintains a balanced environment. Safety for both the juveniles and the correctional officers is the number one priority.
- The County Office of Education provides two teachers and one aide for classroom instruction. There are two co-educational classrooms with one teacher per classroom and one aide for the two teachers. The County Office of Education also supplies the textbooks and necessary materials. Computers are provided for classroom instruction as well. The classrooms are open from 7:00 a.m. until 9:00 p.m. Each youth is assessed and given placement testing to enable the teachers to provide instruction at the proper learning level. The teacher is alone in the classroom for extended periods of time with 12-18 students. There is an intercom system, and the teacher is equipped with a body alarm.
- Groups from area churches provide chaplain services two days a week.
- Sunday is visitation day.
- There are no stun guns or batons on site, although handcuffs are used. Food based OC spray (similar to mace) is the only weapon allowed. This is used if the youngsters become combative with an officer. Before use, a command is given to "*get on the floor*". The staff is aware of who should not be sprayed due to medical reasons.

- Medical care is contracted through the County Health Department. A Physician Assistant is on site on Monday, Wednesday, and Friday to provide mandated physicals. In case of an emergency, transport is provided by ambulance or staff if necessary.
- The facility has a new upgraded computerized fingerprinting system that is connected to the State Department of Justice. The new system offers a rapid return time for processing the identification of detainees and is also utilized in the hiring process of the correctional officers and staff.
- The large turnover of employees at the facility and the slow hiring process makes it difficult to fill vacancies. In addition, a shortage of qualified correctional officers is apparent at both state and county levels. The standard hiring practice is a five-level process that normally takes three to five months to complete. The five levels of hiring a correctional officer are three tests (written, psychological, and physical), a background check and an interview. New guidelines are being implemented this year to improve the current hiring process. This will decrease the timeline to approximately two months and help alleviate the current staffing shortage.

RECOMMENDATIONS

The Grand Jury recommends that the County give priority to the scheduled building of the new Juvenile Hall facility.

COMMENDATIONS

The Grand Jury recognizes the tremendous team effort by the Juvenile Hall administrators and Merced County officials who have collaborated in the planning and funding of this much-needed facility.

The correctional administrators and the head officer were informative and responsive during the tour and presented a genuine concern for the safety and well being of the youths. The Grand Jury applauds the administration and staff of this facility.

LOS BANOS POLICE DEPARTMENT AND CITY JAIL
Mandated Inspection

INTRODUCTION/BACKGROUND

It is mandated that all prison and correctional facilities within the county be inspected by the Grand Jury (California State Penal Code Section 919).

METHOD OF INVESTIGATION

A Grand Jury committee met with Chief Hughes and Commander Knapp of the Los Banos Police Department and Commander Saavedra of the Merced County Sheriff's Department, Los Banos Station on December 11, 2001.

FINDINGS

Inspections of these two facilities were conducted, paying special attention to the detention area. The Los Banos Police Department is a holding facility until prisoners can be transported to the Merced County main jail. Because the Los Banos Police Department is linked to the same network as Merced County main jail, prisoners are booked into this facility by the Los Banos Police Department staff prior to transportation.

The committee inspected areas where evidence is secured to prevent tampering or contamination.

The police officers receive ongoing training in the gathering and handling of evidence and the state-required field training, as well as any new departmental procedures. They have recently implemented a special program dealing with domestic violence. The officers have extensive specialized training with these issues and work closely with other entities with common goals in mind.

It should be noted that while the Los Banos Police Department handles its own city prisoners, it often assists the Gustine and Dos Palos Police Departments, California Highway Patrol, and the Department of Fish and Game with the booking process.

RECOMMENDATIONS

While the Grand Jury has no recommendations, the employees of the Los Banos Police Department and the Merced County Sheriff's Department, Los Banos Station, should be commended for the jobs that they do. They exemplify the true meaning of "teamwork".

MERCED COUNTY SHERIFF'S DEPARTMENT
MAIN JAIL AND SANDY MUSH FACILITIES
Mandated Inspections

INTRODUCTION

The Grand Jury is mandated under California Penal Code Section 919 to inspect the correctional detention centers within the county. In Merced County the predominant detention centers are the Main Jail (located on 22nd street in Merced) and the Merced County Adult Correctional Facility ("Sandy Mush" located at 2584 West Sandy Mush Road in El Nido). This years Grand Jury made its scheduled annual inspection on November 10, 2001. The Grand Jury followed up its annual inspection with two unannounced inspections, due to a number of issues facing the county's correctional system.

The first unannounced inspection took place April 1, 2002 at the Sandy Mush Facility. The unannounced inspection of the main jail was on April 2, 2002. From these inspections, the 2001-2002 Grand Jury gained a very clear insight into the crisis of our correctional system.

BACKGROUND

The Sheriff's Department is responsible for maintaining the county's detention facilities. Its annual budget is \$20 million. The Sheriff is an elected official who is responsible for the safety and well being of two hundred employees. The Sheriff must also manage the needs of six divisions: Jail, Patrol, Detectives, Warrants, Records and Training. The dispatch unit handled 43,732 calls in 2001, which led to 3,791 arrests and 3,005 citations.

Over the years, the inmate population with which the Sheriff's correctional employees must deal has gone from being low misdemeanor offenders to violent felons. Currently, there are almost twenty gangs that must be identified and separated while processing inmates. The State Board of Corrections oversees Title 15 which sets the minimum standards for all aspects of inmate welfare. This includes meals, exercise, housing conditions, medical treatment, inmate safety checks and visitation. The Board of Corrections also sets the inmate capacity for detention centers.

METHOD OF INVESTIGATION

| | |
|--------------|--|
| 10-04-02 | Annual inspection of both facilities. |
| 04-01-02 | Unannounced inspection of Sandy Mush Correctional Facility. |
| 04-02-02 | Unannounced inspection of the main jail. During these various inspections, many employees were interviewed and various materials obtained. |
| Other dates: | Telephone interviews were conducted. A copy of Title 15 was obtained. Copies of departmental manuals and policies were also obtained. |

FINDINGS

Main Jail

The main jail was constructed in 1968, with renovations in 1995 to the booking area. The main jail capacity is 185 inmates, with 8 inmates per cell. Due to regulations set by the State Board of Corrections, the maximum amount of inmates which can be housed in the main jail is 166. This is where most of the bookings take place, with the exception of females during the night shift, who are booked at the Sandy Mush Facility.

During our tour, the current inmate to correctional officer ratio was 1 officer for every 32 inmates. These are unsafe conditions when one factors in bookings, court processing, transportation and inmates who require two officers. A *two-officer inmate* is one who may cause harm to himself, any in administrative segregation, or an inmate who has been found to be violent. The jail population is 93% felons (Appendix A), both sentenced and pretrial. Since regulations keep the inmate population at a set number, early releases are almost a daily occurrence. Only inmates that have been sentenced can be released early. Since early releases must take place due to inmate over population, sentenced felons are being released.

Due to the enforcement of the three strikes law, the correctional system has seen a major increase in pretrial felons. More felons are now choosing for their cases to go to trial rather than accept plea agreements.

The number of two-officer inmates has increased over the last few years, yet the number of correctional officers has remained the same over the last 5 years.

The county is obligated to cover all medical costs while inmates are in the detention facility. The current budget proposal for medical services for 2002-2003 is over \$2 million. This will be the first full year using a new contracted medical service that supplies all medical and dental services as well as medication. Due to the lack of correctional officers (in combination with economical reasons), private security guards are often used to watch inmates while they are hospitalized.

The transporting of inmates and the problems that arise is addressed in the Sandy Mush section.

After our visit to the main jail, it is clear staffing levels are not enough to be in compliance with Title 15 minimums. The main areas not in compliance are inmate visual checks and inmate cell checks.

Sandy Mush

The Grand Jury found that similar conditions that exist at the main jail exist at Sandy Mush as well. Sandy Mush was created as a minimum-security facility but now houses maximum-security inmates. At the time of examination, there were 472 male and female

inmates. The maximum capacity is 525, but under regulations set by the state only 472 individuals can be housed at any one time. Of those, 69 % are felons (324 inmates). The inmate-to-officer ratio at Sandy Mush is 1 officer for every 95 inmates.

Title 15 mandates that officers have visible eye contact with inmates at different time intervals, as well as cell checks. These areas (as well as inmate yard time) need to meet the minimum standards. With the current number of correctional officers, this is difficult to do. Being found in non-compliance of Title 15 by the Board of Corrections will make the County of Merced ineligible for correctional grants.

The kitchen crew makes about 2000 meals every day. The meals are prepared for Sandy Mush, the downtown jail, juvenile hall and the Marie Green Center. Two civilian employees (Cook I & II) are the only supervision of the kitchen crew, which is composed of all inmates. No correctional officers are present while the inmates prepare the meals with knives and other potentially dangerous utensils. This practice appears to be unsafe for inmates and employees both.

Inmates are brought to the main jail from Sandy Mush for Court. The transporting of inmates takes its toll on the correctional system's resources. On a normal day, 8 to 10 trips are made from Sandy Mush to the main jail. Each trip takes 20 minutes one way. There can be 40 to 100 inmates taken to court on any given day. Currently, no policy exists limiting the number of inmates an officer can transport to the main jail. All inmates are processed into a sally port (an enclosed gated area for transporting inmates), then to a vehicle. While firearms are not allowed inside any detention center, officers are armed when transporting inmates. Once transported to the main jail, the inmates are placed into holding cells and wait to be taken to court. During this process, the officers still must deal with new arrestees, inmate medical needs and inmate disruptions. There are only five correctional officers to handle this heavy traffic.

Video arraignment has reduced the transportation of inmates by 20 to 40 individuals per day. This is only being used in conjunction with the Los Banos Courts at present. This will help cut down the number of trips to court and the number of inmates transported daily, reducing cost while creating a much safer environment for officers and inmates.

Visiting hours are difficult to manage. At times there are 300 people with 3 correctional officers to monitor the proceedings. Currently, inmates and visitors have nothing but a regular table separating them. It is during these visits that it is possible for contraband to be given to inmates. They are now utilizing a K-9 unit to help in the search for this contraband. The correctional team addressed this issue by applying for and getting a grant to create segregated visiting areas. This will be much easier to monitor.

Due to the gang problem that exists in Merced County, housing these inmates becomes a great chore. On one visit, the Grand Jury saw firsthand the difficulty of keeping members separated. 72 inmates belonging to one gang were in lockdown due to conflicts in the yard. This in itself creates problems in maintaining security with the rest of the inmates.

The lack of proper staff leads to overtime and on-duty injuries. Approximately one year of training is necessary before a correctional officer is fully functional in his or her duties.

Funding Proposals

This Grand Jury has investigated alternatives that have been used in other counties to combat the financial aspects of these problems.

One of the most innovative methods we found was used in Placer County. The county charges the inmates the cost of their stay. Example: If an inmate stays for ten days, the average cost per day is \$65.00. The inmate would then be billed for \$650.00. It is then recovered through revenue and reimbursement. Annually this method recoups 1% to 2% of the monies owed. This is enough for Placer County to pay for two additional correctional officers and the administrative cost of revenue and reimbursement. This system was very easy to implement, while creating a new revenue stream for the county.

Secondly, several counties over the last few years have passed measures to increase the sales tax to pay for new facilities. In researching this, it was found an overall majority of counties passed these measures for new facilities.

The third proposal would be to provide a dedicated grant writer to oversee the grant process. This not only will increase revenue to the department but will also support administrative functions, making the process more beneficial. This would be a great way to take advantage of the Board of Correction's alternative programs.

Finally, the revenue generated by the Sheriff's department (fees, fines, permits, etc.) should be directed back into the department, not the general fund.

Location Proposals

In February 2000, a proposal was submitted to County Administration suggesting converting the current library building into a Justice Center. A *Justice Center* is a complex that houses courts and all departments of law enforcement (Sheriff, District Attorney, Public Defender, Probation, etc.). Key points for using this building as a center included the following:

- Close proximity to the main jail
- Cost effective method of transportation
- Possible use of underground passageway to the courts, thereby safer
- Consolidation of all court systems into one area

Other options for housing a Justice Center include the 200+ acres out at Sandy Mush or the old Castle Air Force Base, which has ample room for such an endeavor.

RECOMMENDATIONS

1. The County has an obligation to create new detention facilities to ensure the safety of its residents.
2. The County must budget for more correctional officers to be in compliance with Title 15 and to ensure the safety of the employees of the Sheriff's Department as well as the inmates they house.
3. The Sheriff's Department should explore the benefits of hiring additional officers and its results in reducing overtime costs.
4. The Sheriff's Department, along with the County, should immediately look into the feasibility and implementation of similar programs like Placer County's as new revenue sources.
5. The County should form a committee to propose a measure to fund new construction of detention/justice facilities. The Grand Jury should review this committee's implementation and progress.
6. The County should budget for a sole grant writer to be dedicated to Merced County's law enforcement agencies.
7. The County needs to create a long-term detention facility plan.
8. The County needs to create a long-term staffing plan for the Sheriff's Department.
9. Automating the phone system in the Sheriff's Department would free up the Security Systems Operators to concentrate on Minute Order updates, accuracy, releases, etc.
10. A simple automated I.D. reader system to check for warrants would streamline and expedite the current manual process, providing for greater accuracy.
11. A video camera focused on the front door of administration at the Sandy Mush Facility would ensure the safety of staff during nighttime releases.
12. An automated front door for the Security Systems Operators to open at Sandy Mush Administration would help improve safety of staff during nighttime releases.
13. The front desk area of Sandy Mush should be made bullet proof for the safety of staff and inmates alike.
14. The Sheriff's Department needs to implement a policy for housing two-officer inmates on the ground floor cells to provide for officer safety.
15. The Sheriff's Department needs to implement a policy that dictates how many inmates one officer can transport back and forth from Sandy Mush to the main jail.

16. Only trained correctional officers need to be used to handle every aspect of inmate supervision.
17. Budgeting must be made so an additional correctional officer can be added to the kitchen area to ensure everyone's safety.
18. It is recommended that the Sheriff's Department look into the feasibility of having a safety consultant review all aspects of the department.

SUMMARY

The Grand Jury wishes to strongly commend the men and women who work in such conditions on a day-to-day basis. We feel the current staff does a remarkable job and should be applauded for their efforts under the most difficult of situations. The Grand Jury looks forward to the County's implementation of various solutions to help alleviate at least some of this difficult scenario.

DATE: 04/01/02
TIME: 20:28:32

AVERAGE DAILY POPULATION
04/01/02 THRU 04/01/02

PAGE: 1
PROGRAM: SJ0119

| MAIN JAIL | | | | | SANDY MUSH | | | | | WEEKENDER | | | | |
|-----------|-----|-----|-----|-----|------------|-----|-----|-----|-----|-----------|-----|-----|-----|-----|
| ----- | | | | | ----- | | | | | ----- | | | | |
| | FEL | MIS | OTH | ALL | | FEL | MIS | OTH | ALL | | FEL | MIS | OTH | ALL |
| MALE | | | | | | | | | | | | | | |
| SNT | 23 | 5 | 0 | 28 | | 98 | 31 | 0 | 129 | | 5 | 61 | 0 | 66 |
| PRT | 134 | 6 | 0 | 140 | | 252 | 22 | 0 | 274 | | 2 | 6 | 0 | 8 |
| BOTH | 157 | 11 | 0 | 168 | | 350 | 53 | 0 | 403 | | 7 | 67 | 0 | 74 |
| FEMALE | | | | | | | | | | | | | | |
| SNT | 0 | 0 | 0 | 0 | | 18 | 1 | 0 | 19 | | 2 | 10 | 0 | 12 |
| PRT | 0 | 0 | 0 | 0 | | 48 | 2 | 0 | 50 | | 0 | 0 | 0 | 0 |
| BOTH | 0 | 0 | 0 | 0 | | 66 | 3 | 0 | 69 | | 2 | 10 | 0 | 12 |
| UNKNOWN | | | | | | | | | | | | | | |
| SNT | 0 | 0 | 0 | 0 | | 0 | 0 | 0 | 0 | | 0 | 0 | 0 | 0 |
| PRT | 0 | 0 | 0 | 0 | | 0 | 0 | 0 | 0 | | 0 | 0 | 0 | 0 |
| BOTH | 0 | 0 | 0 | 0 | | 0 | 0 | 0 | 0 | | 0 | 0 | 0 | 0 |
| ALL | | | | | | | | | | | | | | |
| SNT | 23 | 5 | 0 | 28 | | 116 | 32 | 0 | 148 | | 7 | 71 | 0 | 78 |
| PRT | 134 | 6 | 0 | 140 | | 300 | 24 | 0 | 324 | | 2 | 6 | 0 | 8 |
| BOTH | 157 | 11 | 0 | 168 | | 416 | 56 | 0 | 472 | | 9 | 77 | 0 | 86 |

| WORK IN LIEU | | | | | WORK FURLOUGH | | | | | OTHER | | | | |
|--------------|-----|-----|-----|-----|---------------|-----|-----|-----|-----|-------|-----|-----|-----|-----|
| ----- | | | | | ----- | | | | | ----- | | | | |
| | FEL | MIS | OTH | ALL | | FEL | MIS | OTH | ALL | | FEL | MIS | OTH | ALL |
| MALE | | | | | | | | | | | | | | |
| SNT | 39 | 23 | 0 | 62 | | 33 | 9 | 0 | 42 | | 11 | 48 | 0 | 59 |
| PRT | 0 | 0 | 0 | 0 | | 0 | 0 | 0 | 0 | | 14 | 9 | 0 | 23 |
| BOTH | 39 | 23 | 0 | 62 | | 33 | 9 | 0 | 42 | | 25 | 57 | 0 | 82 |
| FEMALE | | | | | | | | | | | | | | |
| SNT | 9 | 3 | 0 | 12 | | 6 | 4 | 0 | 10 | | 6 | 3 | 0 | 9 |
| PRT | 0 | 0 | 0 | 0 | | 0 | 0 | 0 | 0 | | 2 | 4 | 0 | 6 |
| BOTH | 9 | 3 | 0 | 12 | | 6 | 4 | 0 | 10 | | 8 | 7 | 0 | 15 |
| UNKNOWN | | | | | | | | | | | | | | |
| SNT | 0 | 0 | 0 | 0 | | 0 | 0 | 0 | 0 | | 0 | 0 | 0 | 0 |
| PRT | 0 | 0 | 0 | 0 | | 0 | 0 | 0 | 0 | | 0 | 0 | 0 | 0 |
| BOTH | 0 | 0 | 0 | 0 | | 0 | 0 | 0 | 0 | | 0 | 0 | 0 | 0 |
| ALL | | | | | | | | | | | | | | |
| SNT | 48 | 26 | 0 | 74 | | 39 | 13 | 0 | 52 | | 17 | 51 | 0 | 68 |
| PRT | 0 | 0 | 0 | 0 | | 0 | 0 | 0 | 0 | | 16 | 13 | 0 | 29 |
| BOTH | 48 | 26 | 0 | 74 | | 39 | 13 | 0 | 52 | | 33 | 64 | 0 | 97 |

168 MAIN JAIL
472 SANDY MUSH
86 WEEKENDER
74 WORK IN LIEU
52 WORK FURLOUGH
97 ALL OTHER FACILITIES

831 MALE
118 FEMALE
0 SEX UNKNOWN
702 FELONY
247 MISDEMEANOR
0 OTHER CLASS

Appendix A

ATWATER POLICE DEPARTMENT

Complaint Number 01-02-01

INTRODUCTION/BACKGROUND

This complaint alleges that the Atwater Police Department did not properly investigate a case involving the disappearance of Anthony Bass, which began as a missing person case and has now been classified as a "missing person-suspicious circumstances".

METHOD OF INVESTIGATION

12/06/01 A committee of the Grand Jury met with Chief Moore to discuss specifics of the case.

An Internet search was conducted to gather more information about the Atwater Police Department website for missing persons.

02/04/01 A committee of the Grand Jury interviewed Commander Pietro of the Atwater Police Department and a copy of the case was obtained.

03/14/02 A committee of the Grand Jury interviewed three members of the District Attorney's office. District Attorney Gordon Spencer, Chief Investigator Dan Murphy and Investigator Steven Brown were interviewed.

03/18/02 The committee requested a copy of Atwater Police Department Standard Operating Procedures for investigation of a missing person.

FINDINGS

- Although Chief Moore stated that the Standard Operating Procedure for investigation of missing person's cases by the Atwater Police Department was complied with in this case, the Grand Jury found that the Atwater Police Department did not comply with their own procedures and that their failure to so comply may have jeopardized the investigation at its earliest, most critical, stage.
- The family of Anthony Bass contacted the California Department of Justice regarding the case, and that department gave the Atwater Police Department several suggestions of possible "leads" or areas of investigation that should be pursued. The Atwater Police Department complied with some of the suggestions but not all of them.
- After numerous attempts to get the Atwater Police Department to take action in the case, the family of Anthony Bass contacted the Merced District Attorney's office for assistance. After reviewing the case, the District Attorney's office commenced its own investigation of the matter.

- The District Attorney's office never advised the Atwater Police Department to cease their investigation of the case or defer their investigation to the District Attorney's office. It is not standard procedure for a police department to turn over a murder case to the District Attorney's office for investigation.
- The Grand Jury spent considerable time speaking with Investigator Steven Brown. The District Attorney's office has followed up on every lead suggested by the Department of Justice, developed new leads, and continues to investigate the case. The D.A.'s office has kept the family informed of the status and progress of the investigation.
- A recommendation was made to the Atwater Police Department by a prior grand jury to provide a written response to complaints by citizens, advising them of the progress and final disposition of the complaint. The Atwater Police Department has not been in contact with any members of the Bass family since June, 1996.
- The Atwater Police Department has a website for missing persons. The website has not been updated for two years and also posts an inaccurate physical description and inaccurate date of disappearance for Anthony Bass.

RECOMMENDATIONS

- The Atwater Police Department should immediately correct on the website the inaccurate personal information on missing person Anthony Bass.
- The Atwater Police Department should establish procedures for posting, investigating, and monitoring missing person cases and information.

COMMENDATION

The Grand Jury committee would like to commend the investigators of the District Attorney's office on their thoroughness on following up on leads and developing new ones. They have left no stone unturned in an effort to help a family find closure to a case that is seven years old.

CITY OF ATWATER AND CHIEF OF ATWATER POLICE

Complaint Number 01-02-02

INTRODUCTION/BACKGROUND

The complainant alleges misconduct by Chief Moore of the Atwater Police Department and Mayor Trevino of Atwater regarding the Police Activities League (PAL),

The Atwater Police Department sponsors PAL, a private non-profit corporation. Former Atwater Police Officer Mike Keeler started the non-profit organization January 8, 1998. PAL was to provide constructive activities to youth as an alternative to nonproductive behaviors and promote a stronger relationship between the police and youth of Atwater. A few of the programs sponsored by PAL included karate, boxing, BMX biking, and Go-Karting.

The most profitable PAL program was Go-Karting, supported by many parent volunteers and generating nearly \$100,000 in the year 2000. A private for-profit business sponsored the BMX bike program, which generated several thousand dollars a year for the PAL program and had a much smaller number of parent volunteers.

The BMX bike and the Go-Kart program began sharing leased facilities during the summer of 1999 on property owned by the City of Atwater. That was the beginning of several years of conflict for the organization. This eventually led to complaints made to the Chief of Police and City Council and to the resignation of the director and many of the board members. The close proximity of the two activities, BMX biking and Go-Karting, generated high emotionally-charged negative feelings toward each other.

The BMX program wanted to relocate their facility to another area of Atwater. However, the program needed funds to make improvements to the property. Many members of the organization that favored the BMX program felt the dispute could not be resolved to their satisfaction and complained to the City Council, the Mayor, and the Chief of Police.

METHOD OF INVESTIGATION

09/22/01 A Grand Jury committee met with the complainant to discuss specifics of the complaint.

10/22/01 A Grand Jury committee met with the former executive director of PAL.

12/06/01 A Grand Jury committee met with Chief Moore in order to complete the investigation.

An Internet search was conducted to gather more information about Police Activities Leagues on a statewide basis.

- 02/04/02 A Grand Jury committee interviewed Commander Frank Pietro and Atwater Police Officer Randy Carruthers. The committee requested and received current PAL Board minutes.
- 03/14/02 A Grand Jury committee interviewed Gordon Spencer, District Attorney and Wayne Hutton, Supervising Criminal Investigator.
- 03/19/02 A Grand Jury committee interviewed a former PAL Board member.
- 04/08/02 A Grand Jury committee interviewed a member of the State Police Activities League in Sacramento.
- 04/30/02 A Grand Jury committee requested and received a copy of the Los Banos Police Activities League Bylaws.

FINDINGS

- The Atwater Police Activities League Bylaws state that the Executive Director shall be appointed by the Board of Directors and serve as determined by the Board.
- The Atwater Police Department Assignment Description for the Atwater Police Activities League Executive Director states that the Executive Director is assigned according to certain qualifications and can be removed by the Chief of Police for five different reasons.

RECOMMENDATION

The bylaws of the PAL organization and the Atwater Police Assignment Description should reflect how the two documents interface with regard to the hiring and firing of the Executive Director and the director's role and responsibilities to each organization.

FINDINGS

- The Police Department investigated the Executive Director of the PAL programs as a result of receiving a complaint by a PAL Board member.
- The former Executive Director and the Atwater Police Department are in ongoing litigation regarding this investigation.

RECOMMENDATION

None

FINDINGS

- Chief Moore ordered the PAL Board to resign and turn over keys to the operation, thinking he had proper authority to do so.

- Chief Moore ordered the PAL board to resign and turn over keys without proper authority, based on the current PAL bylaws.
- Chief Moore was informed he could not take such action.
- Chief Moore withdrew his order for the resignation.
- Chief Moore submitted a list of potential new board members to the reinstated board.

RECOMMENDATION

Chief Moore must ensure he has the legal right to seize property before doing so.

Chief Moore must ensure he has the right to submit a list of new board members to a non-profit organization even if it is sponsored by the Atwater Police Department.

FINDINGS

- Chief Moore and City Council members were getting complaints about the PAL Board and the Executive Director.
- The Chief of Police was told by the City Council to straighten things out or pull the charter.
- Mayor Trevino said, "*This board must go,*" at a public Atwater City Council meeting.
- The Atwater City Council is within their rights to address citizen concerns, to terminate the lease of the Kart facility and to ask the Chief of Police to respond to concerns regarding the PAL program, because the Atwater Police Department holds the charter for the organization.
- The City Council, the Mayor, and the Chief of Police do not have the right to dictate to a non-profit organization how to organize their board.
- The City Council can terminate the kart track lease as stated in the contract.

RECOMMENDATION

The City Council and Mayor should restrict their comments and recommendations to the limit of their legal power. It is not the City Council or the Mayor's place to determine who should or should not run a non-profit organization.

FINDINGS

Commander Pietro stated he did not have a meeting with several City Council members and the Mayor prior to a City Council meeting, which would have constituted a violation of the Brown Act.

RECOMMENDATION

None

FINDINGS

- Commander Pietro relayed a message from the City Council ordering the PAL Board to comply with Plan A (reorganize the PAL Board), or the City Council would go to Plan B (dissolve the PAL organization completely).
- The City Council does not have the legal authority to dictate to a non-profit organization how to organize their board.

RECOMMENDATION

The contract between the PAL organization and the City of Atwater to lease the kart facility should be honored as a legitimate contract free from threats, as would occur with any other profit or nonprofit business.

FINDINGS

- Chief Moore contacted the BMX promoter and advised him not to show up for contract negotiations.
- Chief Moore stated he did this during the time he thought he had the authority to dictate to the PAL Board what they could and could not do.
- Chief Moore did not have the authority to make recommendations on behalf of the PAL organization.

RECOMMENDATIONS

Chief Moore must not interfere with non-profit business affairs.

OVERALL RECOMMENDATIONS/COMMENTS

The parents, City Council, Mayor and Chief of Police lost sight of what was the overall purpose of the PAL organization. According to the California Police Activities League, it is to prevent juvenile crime by promoting adult supervised social, educational and recreational activities while promoting a stronger relationship between the police and youth.

Those involved in the Atwater Police Activities League need to revise their bylaws, refocusing on the true purpose for this organization. The adults involved need to stay focused on what is good for the children and abide by the bylaws of the organization and the laws of California.

CITY OF LIVINGSTON
Complaint Number 01-02-05

INTRODUCTION/BACKGROUND

A complaint was received from two citizens of the City of Livingston. The following concerns were listed in the complaint.

- The city has a large amount of money in an account at Bank of America in a non-interest bearing account.
- There are no records of fuel key usage, which may imply misuse.
- There is a lack of accountability for employee travel expense and reimbursement.
- The balance of the employees' computer purchasing fund remains the same even though employees have purchased computers.
- Questions had arisen over the wire and fund transfers.

METHOD OF INVESTIGATION

Interviews were conducted as follows:

- | | |
|----------|--|
| 09-13-01 | Members of the Grand Jury interviewed one of the complainants where documentation was received and reviewed. |
| 09-24-01 | A Grand Jury committee interviewed another complainant. Additional documentation was provided and reviewed at that time. |
| 11-14-01 | The Grand Jury committee interviewed the City Manager and the Finance Director. |
| 03-06-02 | The Grand Jury met with the City Manager Pro Tem. |

FINDING

The City of Livingston does not have an open account at Bank of America.

RECOMMENDATION

The monthly financial reports should be clarified as to the actual cash balances of each account versus the fund balances. This will make clear the question of interest bearing and non-interest bearing accounts and actual balances.

FINDING

When the Grand Jury began our investigation, the City of Livingston had no fuel key policy in place (card/keys used by employees to fuel city vehicles). Since that time, one has been implemented.

RECOMMENDATIONS

There are no recommendations at this time. It should be noted that the City Manager Pro Tem and the staff should be commended on the rapid development and implementation of the new fuel key policy.

FINDING

Because the City Council had not approved a proposed travel-expense policy, questions arose regarding per diem and reimbursement. There is a policy now in place addressing such matters.

RECOMMENDATIONS

There are no recommendations at this time.

FINDING

Currently the wire and check transfers require authorization by the City Manager and the Finance Director as previously recommended by an outside CPA during an audit of the city in October 2000.

RECOMMENDATIONS

There are no recommendations at this time.

Note: There appeared to be a lack of communication and understanding between prior management and City Council. It is clear that the City Manager Pro Tem is attempting to bridge those gaps, which is evident by the new policies now set in place.

MERCED COUNTY
PLANADA SCHOOL DISTRICT
Complaint Number 01-02-07

INTRODUCTION/BACKGROUND

A complaint was received from a citizen that the Planada School Board had violated conflict of interest laws.

Members of a school board are conclusively presumed to be involved in the making of contracts under the board's jurisdiction. It is a violation of the conflict of interest laws when a board member is part of a contract and his or her immediate family benefits by \$250.00 or more in a twelve-month period. (California Gov. Code #1090)

The complainant also alleged numerous violations of the Brown Act. This is a law which guarantees the public's right to attend and participate in meetings of local legislative bodies.

METHOD OF INVESTIGATION

| | |
|----------|--|
| 10/10/01 | A Grand Jury Committee met with the complainant to interview and discuss the specifics of the complaint. |
| 12/03/01 | A Grand Jury Committee met to review the complaint. |
| 12/12/01 | A Grand Jury Committee met with Fernanda Saude, County Counsel. |
| 01/28/02 | Minutes and postings of the Board of Directors were subpoenaed. |
| 03/10/02 | A Grand Jury Committee met to review subpoenaed minutes and postings. |
| 04/11/02 | A Grand Jury Committee met with Gordon Spencer, District Attorney. |
| 05/29/02 | A Grand jury Committee met with an investigator from the District Attorney's office. |

FINDINGS

- The spouse of a member of the Board of Trustees was hired for the newly created position of Certified Computer Teacher/Technology Coordinator. The teacher who applied and received the position was the only in-house applicant. Hiring was done without taking outside applications. Beginning in 2000, this new position resulted in an \$8,000.00 yearly increase in salary.

- The Board of Trustees contracted with the son of a board member. He was under contract as a computer consultant at the rate of \$35.00 per hour and was in this position from February to April, 1998. He received a total of \$4,193.00.
- The spouse of a member of the Board of Trustees, a classified employee, was reclassified as part of a group in May of 2000, and the change resulted in a yearly pay increase of approximately \$2,400.00.
- The Board violated the Brown Act when it failed to notify an employee personally or by mail at least 24 hours before the time of an employee discipline hearing.
- The Board held closed sessions that were not on the posted agenda.

ACTION

Because of the seriousness of the possible violation of conflict of interest laws, the results of the Grand Jury investigation were referred to the District Attorney's Office for further investigation. The investigation found no evidence of criminal intent.

RECOMMENDATIONS

- The Board of Trustees must realize that they cannot hire, promote or contract for services of their immediate families during their terms as trustees.
- Hiring procedures should be reviewed and possibly revised. Every effort should be made to draw the largest number of applicants for a given position.
- It is recommended that the Planada School Board requests education in the Brown Act from the County Schools Office. It is vital that small school districts have access to the laws regarding their decision-making.
- Board members-elect should be in-serviced in their responsibilities under the law before assuming office.
- The Brown Act is a method of conducting business that results in fairness to all. The Grand Jury feels strongly that the Board of Trustees must operate within the rules and regulations of the Brown Act. Failure to do so may result in continued investigation of the School Board by future Grand Juries.

MERCED COUNTY MANAGEMENT SERVICES

Complaint Number 01-02-10

INTRODUCTION/BACKGROUND

The Grand Jury received a complaint alleging unfair hiring practices within the Merced County Management Services and the Board of Supervisors management. Management Services is a county department which recruits and interviews county job applicants.

METHOD OF INVESTIGATION

- 09-26-01 The Grand Jury met with the complainant for clarification of job qualifications and job duties.
- 10-10-01 The Grand Jury requested and received supplemental information pertaining to Extra-Help Deputy Board Clerk I job qualifications.
- 03-06-02 The Grand Jury met with Management Services Director, Mrs. Beverly Morse, to clarify Management Services' structure.

BACKGROUND

The complainant alleged that an under-qualified applicant was promoted and hired as an Extra-Help County Deputy Board Clerk I. The complainant felt that the applicant's qualifications were not fully adequate to the position's minimum qualifications. The minimum qualifications for the extra-Help Deputy Board Clerk I position included the following: *Experience Four (4) years of increasingly responsible general clerical, stenographic secretarial experience. (Formal training in secretarial skills, business or community college work may be substituted for the required experience on a year-for-year basis). Previous experience working directly with the functions and requirements of a major board or commission. (As listed on the County Job Announcement).*

FINDINGS

1. A candidate was promoted from an Extra-Help Clerk Typist III position to an Extra-Help Board Clerk I position. The candidate had one year of part-time work experience within management services and one year of previous county employment. The candidate's work experience and college work may not have met all four years of the extensive job qualifications.

2. All educational, clerical and job experience is listed by applicants on a supplemental questionnaire sheet. The listed information is taken in good faith, and applicants are not required to submit copies of their educational or clerical certifications.

RECOMMENDATIONS

1. Management Services must develop and implement a testing procedure for clerical-skill applicants.
2. In order to recruit a fair selection of qualified applicants, Management Services must implement a procedure to ensure proof of all educational and training documentation.
3. Management Services must honor its own guidelines of fair employment recruitment.

MERCED COUNTY DISTRICT ATTORNEY

Complaint Number 01-02-13

INTRODUCTION/BACKGROUND

The complainant alleges the Merced County District Attorney did not hold the Chief of Atwater Police to the same requirements for illegal seizure as other Atwater residents.

METHOD OF INVESTIGATION

- | | |
|----------|--|
| 12/06/01 | A Grand Jury committee interviewed Jerry Moore, Atwater Chief of Police. |
| 03/14/02 | A Grand Jury committee interviewed Gordon Spencer, District Attorney, and Wayne Hutton, Supervising Criminal Investigator. |
| 05/30/02 | A Grand Jury committee conducted a follow-up interview with Wayne Hutton. |

FINDINGS

1. Chief Moore assumed he had the authority to seize the Police Activities League's (PAL) assets.
2. Chief Moore returned the illegally seized Police Activity League assets when he was informed he did not have this authority.
3. The Penal Code 484 on Theft required the person(s) to have malicious intent to permanently deprive someone of their property. Chief Moore did not seize property for malicious reasons.

RECOMMENDATIONS

Police Chief Moore should make sure he has legal authority to seize property before doing so.

ATWATER POLICE DEPARTMENT

Complaint Number 01-02-14

INTRODUCTION/BACKGROUND

The complaint alleges the Atwater Chief of Police illegally voided a citation.

METHOD OF INVESTIGATION

- | | |
|----------|--|
| 12/06/01 | A Grand Jury committee met with Chief Moore to discuss specifics of the case. |
| 03/01/02 | A Grand Jury committee interviewed former Atwater Police Officer Vallati, who wrote the citation. |
| 03/18/02 | Copies of the citation and policy or procedures for voiding tickets were requested, as well as information on the citizen who received the ticket. |

FINDINGS

- The specific citation mentioned in this complaint was presented to Chief Moore, who acknowledged he wrote the word "VOID" on the ticket.
- Chief Moore stated that tickets may be voided, but proper procedures need to be followed.
- The Chief stated no written procedures exist for handling the voiding of tickets. He then stated proper procedures would require speaking to the officer who issued the ticket to determine the nature of the incident that occurred and obtaining the officer's approval for the voiding.
- Chief Moore stated he spoke with the issuing officer about the ticket before voiding it.
- The officer who issued the ticket states the Chief of Police never spoke with him about the ticket, the incident, or the voiding of the ticket.

RECOMMENDATIONS

- Any and all violations and/or incidents involving any citizen should be treated equally according to the law.
- Chief Moore should follow established procedures for voiding a citation.
- The Atwater Police Department should have a written policy and procedure for voiding tickets and require there be written documentation that the policy was followed.

ATWATER POLICE DEPARTMENT
Complaint Number 01-02-15

INTRODUCTION/BACKGROUND

A complaint was received alleging that there was harassment and abuse of authority by the Atwater Police Department.

METHOD OF INVESTIGATION

Members of the Grand Jury met with the complainants on January 16, 2002 to discuss the nature of the complaint.

FINDINGS

After carefully evaluating the information that was collected through the interview process, it was determined that although there may have been validity to some of the allegations, a formal complaint was never filed with the Atwater Police Department by the complainants.

RECOMMENDATIONS

Filing a complaint with the Police Department is the proper procedure to follow. This gives them the opportunity to act on the matter. The Grand Jury can then investigate after this has occurred.

ATWATER CITY PLANNING COMMISSION

Complaint Number 01-02-16

INTRODUCTION/BACKGROUND

A complaint was received by the Grand Jury alleging the ineligibility of an Atwater City Planning Commission member. A city planning commissioner is officially appointed by the City Council and serves a four-year term in civil office.

METHOD OF INVESTIGATION

- 02-25-02 The Merced County Elections Office was contacted for civil office information.
- 02-26-02 The Atwater City Hall was contacted for information pertaining to City Council and City Planning Commission qualifications.
- 02-28-02 A Grand Jury committee met with the complainant.
- 03-14-02 An attempt was made to subpoena Mr. Hans Marsen.
- 03-25-02 A registered letter was sent to Mr. Hans Marsen, an Atwater City Planning Commissioner, requesting an interview.

BACKGROUND

The complainant alleged that Mr. Hans Marsen is unqualified to hold a position of civil office. To serve in civil office, a candidate must be a citizen of the state. It is reported that Mr. Marsen may be a British citizen only.

FINDINGS

1. Precise information regarding citizenship qualification for an appointed planning commissioner was found to be limited.
2. **CALIFORNIA CODE/GOVERNMENT CODE 1020:** *A person is incapable of holding a civil office if at the time of his election or appointment he is not 18 years of age and a citizen of the State.*

Government Code 1020 cites two qualifications to serve in civil office, **age and citizenship**. Upon investigation into this code and according to the Attorney General's office, the citizenship requirement is questionable depending on incumbent's level of participation and impact on the public.

3. **Qualifications for an elected City Council Member:**
City Council members in both the City of Atwater and the City of Merced must be citizens, registered voters, and residents in order to qualify to serve in civil office.
4. **Qualifications for an appointed City Planning Commission Member:**
The City of Atwater requires an appointed planning commissioner to be a resident only. (*Atwater General Municipal Election Handbook*).

The City of Merced requires that an appointed planning commissioner be a citizen, a registered voter, and a resident. (*Merced County Elections Office*).
5. Atwater City Council Ordinance CS 512, pertaining to appointment of planning commissioners, was adopted and last reviewed in 1982. The qualifications are listed as follows: "*All Council-appointed members of all City Commissions must be residents of the City of Atwater. Such Commission members shall automatically be deemed to have resigned upon changing their place of residence to a place outside the City of Atwater.*" (Ord. CS 512, 1982).
6. Mr. Marsen's civil office appointment to Planning Commissioner may not have been fully reviewed by legal counsel and City Council members before being granted.
7. Mr. Marsen failed to respond to several Grand Jury inquiries.

RECOMMENDATIONS

1. Civil office appointments in question for the City of Atwater must be fully reviewed by legal counsel and Atwater City Council members before being voted upon and granted.
2. The Atwater City Council should review its current policy for appointing planning commissioners to be in compliance with state law.

MERCED COUNTY BOARD SUPERVISOR

Complaint Number 01-02-19

INTRODUCTION/BACKGROUND

A complaint was submitted to the Grand Jury that involved the alleged unprofessional and inappropriate conduct by Merced County Board Supervisor Deidre Kelsey. The alleged incidents included the use of retaliation and intimidation against county employees. After a Grand Jury committee concluded its immediate findings, Grand Jury members voted to submit these findings to the Attorney General's Office for assistance and further review.

METHOD OF INVESTIGATION

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|----------|--|
| 11-01-01 | The Grand Jury interviewed a county planning employee under oath to discuss the complaint received. A County Court Transcriber recorded the interview. |
| 11-15-01 | A Grand Jury committee met with a county planning official to inquire about information pertaining to the complaint received and county planning structure. The session was recorded. |
| 11-19-01 | A Grand Jury committee interviewed an official of the County Planning Department to discuss mining permit information. The interview was recorded. |
| 11-20-01 | A Grand Jury committee interviewed the owner of a mining company to obtain information related to the complaint. The interview was recorded. |
| 11-20-01 | A Grand Jury committee met with a County Public Works Road Division official to gather information regarding roadway impact agreements. The session was recorded. |
| 11-26-01 | A Grand Jury committee interviewed a second mining company representative to gather information regarding written royalty-contracts. The interview was recorded. |
| 11-27-01 | A Grand Jury committee met with a second County Planning Department official to discuss information pertaining to the complaint and county department regulations. The session was recorded. |
| 11-30-01 | To verify their findings, a Grand Jury Committee met with an attorney knowledgeable in mining law. |
| 01-08-02 | A Grand Jury committee met with the County Assessor and a County Chief Appraiser to collect information pertaining to property tax. |

- 04-03-02 A Deputy Attorney General from the Department of Justice met with the Grand Jury to offer advice on the complaint.
- 05-21-02 The Grand Jury interviewed Supervisor Deidre Kelsey under oath. The interview was recorded.

FINDINGS

1. Supervisor Kelsey is a partner in the family-owned mining business, *Merced River Mining*. Alleged conflict of interest occurred between September 1993 and July 2000, during which time Supervisor Kelsey's husband, Mr. Jon Kelsey, obtained a county mining permit.
2. A county employee stated Supervisor Kelsey used inappropriate actions, which included the use of retaliation and intimidation against county employees. The alleged behavior was an attempt to dismiss a permit recommendation for a competing mining company of the Kelsey's.
3. During her current term in public office, Supervisor Kelsey attempted to delay efforts of a mining operation that would have been in competition with Merced River Mining.
4. The Kelsey's family-owned mining business, Merced River Mining, had a direct influence on Supervisor Kelsey's actions.
5. Merced River Mining had two written royalty contracts with a private mining company from February 1999 through June 2000.
 - On February 12, 1999, there was a contract between Merced River Mining and Calaveras Materials Incorporated ("CMI"). At this time CMI was Merced River Mining's largest buyer of dredge tailing materials.
 - On July 7, 1999, Merced River Mining requested a revised contract with CMI in order to expand into a long-term mining agreement at a higher royalty fee. CMI, however, chose to dissolve its contract with Merced River Mining due to high operational costs of refining dredge tailings.
6. Merced River Mining failed to file for an appropriate Roadway Impact Agreement with the Department of Public Works Road Division. The agreement was not filed until November 1999, six years after the mining operation began.

7. During the investigation, evidence indicated that Merced River Mining failed to pay the county road impact fees that were paid to them in advance by CMI. The amount was paid by CMI for the mining year of 1999 with the understanding that Merced River Mining would pay the road impact fees in a timely manner.
8. The Department of Public Works Road Division did not follow through on a Roadway Impact Agreement with Merced River Mining. By not seeking enforcement for the permit condition, the department allowed Merced River Mining to be in noncompliance for several years.
9. While the Grand Jury was investigating this matter, a six-year late payment of \$12,188.50 for road fees for the mining years 1994-2000 was received by the County Department of Public Works Road Division.
10. The Grand Jury was given documentation that Merced River Mining was being monitored by state agencies for several mining permit noncompliance issues.
11. The Kelsey's have operated a bass fishing business since October 1998. This bass fishing business has been operating without a county ordinance permit. Memberships are sold for the bass fishing club at an annual rate of \$900 for an individual membership or \$1500 for a corporate membership.
12. At the time of the Grand Jury investigation, it was determined that a county ordinance permit had not been obtained for the family owned bass fishing business.

Supervisor Kelsey stated, while under oath, that the Planning Department told her the bass-fishing business did not need a permit. In contrast, the Planning Department stated the Supervisor had been verbally informed that a permit was necessary.

13. The County Planning Department is within its legal rights to close down or mandate that a permit be obtained for the Kelsey's bass fishing operation. The department, however, has not enforced legal issues with the Kelsey's due to the opposition and retaliation allegedly used by Supervisor Kelsey.
14. During the Grand Jury's investigation it was found that there is not a Code of Ethics Policy in place for County Supervisors.

RECOMMENDATIONS

1. A Code of Ethics Policy should be in place for the Board of Supervisors.
2. The County Planning Department needs to improve and strictly enforce its permit policies, even when a Supervisor is involved.

3. The County Public Works Road Division needs to implement and regulate a Roadway Impact Agreement tracking system.
4. All permit holders within the county should be held accountable for any violation of their permit conditions.
5. The Planning Department must equally enforce policies and regulations for all individuals conducting business in Merced County.
6. Inquiries made by County Supervisors to department heads, on behalf of their constituents, should be submitted in writing.

SUMMARY

An official or a member of a board is presumed to be involved in the making of contracts under the board's jurisdiction. Not appearing at a meeting or abstaining from a vote does not prevent an act of conflict of interest when decisions are made by the board which directly affect a financial interest of a member.

Elected officials should meet the highest standards of leadership, integrity and guidance. They are expected to follow all rules and regulations expected of the general public and they will treat all individuals equitably and in a fair manner.

Care must be taken that no word or manner gives an individual the impression that one Supervisor is acting solely for his or her own self interest, that of their family, or any other individual or entity. Supervisors need to avoid action that could be interpreted as intimidation in order to force an individual to comply with his or her wishes.

MERCED COUNTY SHERIFF'S DEPARTMENT

Complaint Number 01-02-22

INTRODUCTION/BACKGROUND

The complaint alleges that a blacklist existed that was used against correctional officers in deciding promotions.

METHOD OF INVESTIGATION

- 02/19/02 A Grand Jury committee held interviews with the complainants.
- 04/02/02 A Grand Jury committee interviewed Assistant Sheriff Henry Strength.
- 04/18/02 The Grand Jury heard sworn testimony from Assistant Sheriff Henry Strength.

FINDINGS

- The correctional officers, stating they needed training and compensation to fulfill the duties of *Officer in Charge* (OIC), submitted a letter from their union to the Sheriff.
- The union letter was intended to help prevent any potential liability that may have occurred to the OIC and the Sheriff's Department. Assistant Sheriff Strength interpreted the letter as an indication that the correctional officers did not want to comply with management.
- A list was maintained by the Assistant Sheriff of the correctional officers who did not want to be the Officer in Charge without receiving proper training or compensation.
- The correctional officers perceived the Assistant Sheriff was using the list in a retaliatory manner.
- The Assistant Sheriff perceived the list as a tool for basing promotional decisions.
- The list was used in determining who received promotions. No one on this list received a promotion during the time it has been in existence.
- The Assistant Sheriff viewed those on the list as not wanting to take responsibility; therefore, they would not be promoted.

RECOMMENDATIONS

- Proper training should be provided to correctional officers before they are asked to be Officer in Charge.

- Appropriate compensation should be given to correctional officers when they meet all training criteria and are assigned to Officer in Charge status.
- To avoid further confusion, the list should only contain names of those who have been trained and are qualified to be Officer in Charge.
- The correctional officers who were denied promotion as a result of the blacklist should be reconsidered for any future promotions or to fill additional positions.

MERCED COUNTY SHERIFF'S DEPARTMENT

Complaint Number 01-02-24

INTRODUCTION

As a result of complaints of sexual harassment against Assistant Sheriff Henry Strength, the Grand Jury commenced an investigation of the Sheriff's Office. The complainants alleged incidents of sexual harassment occurred over a period of years. Merced County Equal Employment Opportunity Commission Diversity Director, Robert Morris, conducted an investigation. The County, however, did not take punitive action. Therefore, the individuals took their complaint to the District Attorney. The complainants stated they suffered physical disabilities and family problems due to the stress of the incidents. It was stated that because of fears of reprisal, there was a delay in the filing of the complaints. The complainants reported feelings of abandonment and vulnerability when neither the Equal Employment Opportunity Commission nor the elected officials took action. At this point in the investigation, three additional witnesses came forward alleging sexual harassment.

METHOD OF INVESTIGATION

- 03/28/02 The Grand Jury and District Attorney Gordon Spencer discussed possible courses of action in this matter.
- 04/11/02 Six witnesses were interviewed under oath by the Grand Jury. These interviews were taped.
- 04/18/02 The following three witnesses were interviewed under oath by the Grand Jury. These interviews were taped
1. Merced County Sheriff Tom Sawyer, Retired
 2. Merced County Assistant Sheriff Henry Strength
 3. Merced County Chief Executive Officer Dee Tatum
- 04/25/02 County Counsel Dennis Myers was interviewed under oath by the Grand Jury. The interview was taped.
- 04/29/02 Assistant County Counsel Fernanda Saude was interviewed under oath by a Grand Jury committee. The interview was taped.

FINDINGS

- Prior to the Grand Jury receiving this complaint, County CEO Dee Tatum had been asked by District Attorney Gordon Spencer to personally interview the complainants. Mr. Tatum called Robert Morris of the EEOC and instructed him to concentrate exclusively on this investigation. The report filed by Mr. Morris was inconclusive for sexual harassment.
- County CEO Dee Tatum informed the Grand Jury a county zero-tolerance policy against sexual harassment had been approved in early April by the Board of Supervisors. New policies were not set; the existing laws were simply clarified.
- It is the responsibility of an elected official to discipline the employees under his or her supervision. Therefore, the County did not take action on the complaints. The primary client of County Counsel is the Board of Supervisors, not the county employee.
- There are multiple avenues for county employees through the department of Management Services to grieve complaints, have a hearing and to appeal claims. However, there is no one who acts as an advocate of a county employee. Employees have no recourse except for grievance procedures and no advocate other than union representatives. A county employee would have to seek outside legal counsel if these modalities were not effective.
- The Board of Supervisors has very limited jurisdiction over elected officials. They can only censure.
- The county has an EEOC (Equal Employment Opportunity Commission) officer who is charged with conducting independent investigations of alleged harassment of and by county personnel. The EEOC officer writes reports concerning investigations and the reports are sent to the CEO of the county. Before the report is finalized, the EEOC officer submits the report to County Counsel. The County Counsel is the same office that is in charge of defending the county against lawsuits brought by individuals. Therefore, it is the County Counsel who makes suggestions about the conclusions arrived at by the EEOC officer. A system that allows the County Counsel to review reports and findings, and make suggestions about the conclusions to be reached in the report, would seem to compromise the independence of the EEOC. This could be interpreted as a conflict of interest.
- Retired Sheriff Tom Sawyer admitted under oath that he had been informed of allegations of sexual harassment against Assistant Sheriff Henry Strength. Sheriff Sawyer stated that since Henry Strength denied the allegations and Sawyer was preparing to retire, no formal investigation or action had been taken. When asked if he informed newly appointed Sheriff Carlson of these allegations, Sawyer indicated that he did not.

- Five women testified under oath to various and serious forms of sexual harassment by Assistant Sheriff Strength. The Grand Jury found the complainants and their testimony credible.
- The Assistant Sheriff was given opportunity under oath to respond to each allegation.

RECOMMENDATIONS

- The County, including elected officials, needs to apply county rules and policies in a fair and equitable manner, regardless of the person's position.
- Since there is no policy for disciplinary action against elected employees, the County needs to develop and enforce a mechanism to protect the employees and itself from sexual harassment issues.
- The county's EEOC officer should be able to seek legal opinions outside of County Counsel so the employee's complaint does not present a conflict of interest with county liability.
- The Sheriff's Department needs to enforce policies for investigation of wrongdoing by officials in the department so they do not end up investigating themselves. These procedures should include employing private outside investigators to conduct independent investigations.
- The Sheriff's Office must actively enforce the zero-tolerance policy for sexual harassment.

ADDITIONAL ITEMS

Other complaints were handled as follows:

Complaint

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| 01-02-03 | A Merced County jail issue was dismissed due to Grand Jury's inability to reach complainant despite numerous attempts. |
| 01-02-04 | A complaint against a public agency director was dismissed due to anonymity and a lack of information contained within. |
| 01-02-06 | Complainant was advised to hire an attorney to look further into this case, other avenues having previously been exhausted. |
| 01-02-08 | Complainant was advised that private mental health facilities are not within the jurisdiction of the Grand Jury. |
| 01-02-09 | Complainant was advised that he himself was eligible to file a motion related to his judge and attorney. |
| 01-02-11 | Complainant was advised to turn case over to the District Attorney, as charges were made of alleged criminal activities within the complainant's previous place of employment. |
| 01-02-17 | Complainant was advised to file through the District Attorney, as case was of a criminal nature. |
| 01-02-18 | Issue involved a water district, which was found to not be within the sphere of the Grand Jury's jurisdiction. |
| 01-02-20 | Complaint involved a state park and was dismissed due to lack of Grand Jury's jurisdiction. |
| 01-02-21 | A complaint against a school district was dismissed due to fax transmittal of complaint and no address or telephone number being provided for contact purposes. |
| 01-02-23 | Complainant was advised to obtain an attorney, as Grand Jury does not have jurisdiction in property-line disputes. |

ADDITIONAL RECOMMENDATIONS OF THE MERCED COUNTY GRAND JURY

SUGGESTIONS

To help make the Grand Jury be more effective, the following suggestions are made by members of the 2001-2002 Merced County Grand Jury:

1. The department of County Counsel should not be the one from whom the Grand Jury is to seek legal advice and opinions; or, if County Counsel stays the main resource for the Grand Jury, an alternative legal source should be made available for the Grand Jury's use. The county itself is the main client of County Counsel, with the Board of Supervisors being next. Since the Grand Jury examines and investigates various county departments or matters pertaining to the county, this often creates a direct conflict of interest.
2. Members of the Board of Supervisors should tour our detention facilities once a year. It was noted a tour of our jails has not been done for a very long time. Touring would allow the supervisors to view proceedings firsthand, as well as being a morale booster for staff.
3. The Foreperson and Foreperson Pro Tem (or a designated alternate) should be sent for one of the scheduled formal Grand Jury training sessions. As much notice as possible of scheduled dates for this training should occur when impaneling the Grand Jury in order to help eliminate scheduling difficulties. In addition, a local training seminar should be put together for grand jurors to educate them on the many aspects of the civil grand jury. Alternate jurors should also be invited to participate in this training. Valuable training items could include the following: Investigations, interviewing, report writing, and responses.
4. The Grand Jury has learned that many other counties put an advertisement in their local newspapers in February or March, asking that those interested in serving on the grand jury call in their names and addresses. An information sheet and application is mailed to these individuals. Given the difficulty of establishing a pool of prospective jurors, this is a valuable resource of available jurors with appropriate time and interest for a year-long commitment. Emphasis could be put on accomplishing proper selection for the Grand Jury in ethnicity, gender, and representation of all areas of the county.
5. The Grand Jury should be made aware there is a law library available for their use in the area of the jury complex, as well as an existing account so that copies of pertinent information may be made.